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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,043	12/17/2001	David E. McDysan	RIC01059	5663

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EXAMINER	
GYORFI, THOMAS A	

ART UNIT	PAPER NUMBER
2135	

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/023,043	**Applicant(s)** MCDYSAN, DAVID E.
	Examiner Tom Gyorfi	**Art Unit** 2135

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-24*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

On page 8, line 10 - page 9, line 2, Applicant argues, "Applicants surmise that the Examiner bases his analysis on the premise that the claimed language 'extra-VPN traffic' encompassess traffic other than the particular VPN including traffic associated with other VPNs...Applicants question the reasonableness of the Examiner's interpretation." Examiner fails to see where there is a discrepancy in the interpretation of the term, particularly as the instant specification defines the term "extra-VPN traffic" as "traffic from other VPNs or the Internet at large" (specification, page 6, paragraph 13, line 13; again on page 10, paragraph 27, lines 1-5). Furthermore, Examiner notes that the instant invention does not prevent denial of service attacks altogether, as is implied by Applicant's arguments, but rather merely to prevent traffic outside a VPN from impacting the quality of service of traffic inside said VPN (specification, paragraph 27, lines 1-5). As has been repeatedly established in previous Office Actions, this is precisely what the Seid invention accomplishes.

Additionally, Applicant further argues, "Under the Examiner's interpretation, traffic of such attacks would be transmitted to another VPN, thereby degrading the performance of that VPN". Examiner strongly disagrees, as it was pointed out in the previous Office Action that at no point does Seid ever discloses that traffic from one VPN is transmitted to another VPN (Final Office Action of 7/24/06, page 3, lines 9-11); Examiner respectfully requests Applicant to point out that portion of Seid that Applicant believes supports the above allegation. In contrast to Applicant's allegation, Examiner notes that Seid teaches that each and every VPN managed by Seid is protected on a per-VPN basis against being impacted by traffic from outside its logical domain (Seid, col. 3, lines 10-15).

With respect to Applicant's traversal of Official Notice (see the amendment, page 9, 2nd paragraph from bottom, and again on page 10, lines 11-13), Examiner reminds Applicant that the "common knowledge" used to negate patentability had already been entered into the record, in the form of the RFC 1490 reference (see the Final Office Action of 7/24/06, page 9, last two lines; and page 15, paragraph #8), as well as a citiation from the Seid reference itself which would at the very least suggest to one of ordinary skill in the art that the teachings of RFC 1490 are applicable to Seid. Because Applicant's traversal of Offiicial Notice did not include any arguments as to why the references used to support Examiner's invocation of Official Notice were insufficient, the traversal is thus deemed inadequate and therefore the statement(s) of Official Notice from the previous Office Action are now taken as admitted prior art, as per MPEP 2144.03(c).

With respect to Applicant's arguments against the Applicant admitted prior art (see page 9 of the amendment, last three lines - page 11, line 9), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As noted above and in previous Office Actions, the deficienies that Applicant has observed in AAPA (for example, page 9 of the amendment, last line through page 10, line 3) are rectified by the teachings of Seid.

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